

**REMARKS**

Applicants respectfully submit that all the claims presently on file are in condition for allowance, which action is earnestly solicited. Applicants have amended the claims and canceled claim 36 without prejudice, to more clearly point out the present invention.

**CLAIM REJECTION UNDER 35 U.S.C. 112**

Claims 32-36 were rejected under 35 U.S.C. 112, second paragraph for containing certain informalities. These informalities have now been addressed in satisfaction of 35 U.S.C. 112.

**CLAIM REJECTION UNDER 35 U.S.C. 102****A. The Rejections**

Claims 1-14, 16, and 26-35 were rejected under 35 U.S.C. 102(a) as being anticipated by Applicant Admitted Prior Art, "AAPA" (specification, [0003]-[0018]). Claims 1-8, 12-13, and 26-35 were also rejected under 35 U.S.C. 102(a) as being unpatentable over Long et al. (US 2003/0200197), "Long". Claim 16 was rejected under 35 U.S.C. 102(b) as being anticipated by Peltonen et al. (US 5,890,147), "Peltonen".

Applicants respectfully submit that AAPA does not disclose all the elements and limitations of the representative independent claim 1. Consequently, claim 1 is not anticipated under 35 U.S.C. 102, and the allowance of this claim and the claims dependent thereon is earnestly solicited. In support of this position, Applicants submit the following arguments:

**B. Legal Standard for Lack of Novelty (Anticipation)**

The standard for lack of novelty, that is, for "anticipation," is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements, and the burden of proving such anticipation is on the party making such assertion of anticipation. Anticipation cannot be shown by combining more than one reference to show the elements of the claimed invention. The amount of newness and usefulness need only be minuscule to avoid a finding of lack of novelty.

The following are two court opinions in support of Applicant's position of non anticipation, with emphasis added for clarity purposes:

- "Anticipation under Section 102 can be found only if a reference shows exactly what is claimed; where there are differences between the reference disclosures and the claim, a rejection must be based on obviousness under Section 103." *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).
- "Absence from a cited reference of any element of a claim of a patent negates anticipation of that claim by the reference." *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986), on rehearing, 231 USPQ 160 (Fed. Cir. 1986).

**C. Application of the Legal Standard of Novelty**

Applicants will now present arguments in support of the allowance of representative independent claim 1, and the claims dependent thereon, over AAPA.

The Examiner's rejection ground is based on the Applicants' own description of the prior art. To this end, Applicants respectfully request that the Examiner consider the Applicants' description, AAPA, as a whole. More

specifically, the Applicants indicate at paragraphs [0010] and [0011] as follows, with emphasis added:

"[0010] Although these conventional dynamic foldering technologies have proven to be useful, it would be desirable to present additional improvements. The conventional folder definitions mostly address only the domain of the flat data model. Many of the conventional dynamic foldering technologies assume the metadata appears in the form of a name-value attribute pair. **Conventional dynamic foldering technologies do not provide a complete solution to cover the hierarchical data model,** such as XML, where the criteria of a folder may depend on the context of the criteria of the ancestor folders. Further, **the foldering criteria associated with a conventional dynamic folder are static,** requiring determination when the folder is created. There is no mechanism in conventional foldering technologies to tailor the foldering criteria **at the time a user accesses the dynamic folder.** For example, users may want to define a criterion of the folder to be based on the current month.

[0011] What is therefore needed is a system, a service, a computer program product, and an associated method for creating dynamic folder hierarchies utilizing a context of a criteria of ancestor folders and dynamic foldering criteria. Further, a dynamic foldering technique is desired that allows a user to **define foldering criteria at the time a user accesses a dynamic folder.** The need for such a solution has heretofore remained unsatisfied."

In essence, since the Examiner's sole rejection ground is based on AAPA, the Examiner should also rely on the Applicants' statement in the AAPA to the effect that: (1) Conventional dynamic foldering technologies do not provide a complete solution to cover the hierarchical data model, such as XML; and (2) there is no mechanism in conventional foldering technologies to tailor the foldering criteria at the time a user accesses the dynamic folder.

These two features are now clearly recited in the representative claim 1, as amended. As a result, based on the foregoing strict legal standard for anticipation, Applicants submit that **AAPA does not anticipate claim 1 or the**

**claims dependent thereon.** Thus, the claims on file are allowable and such allowance is earnestly solicited.

Claims 1-8, 12-13, and 26-35 were also rejected under 35 U.S.C. 102(a) as being unpatentable over Long et al. (US 2003/0200197), "Long". Claim 16 was rejected under 35 U.S.C. 102(b) as being anticipated by Peltonen et al. (US 5,890,147), "Peltonen".

Applicants incorporate by reference the presentation made earlier in connection with the allowability of the claims over AAPA. Applicants submit that similarly to AAPA, Long does not describe the following elements of representative claim 1:

"dynamically tailoring foldering criteria at the time of use, to enable a user to selectively access a predetermined dynamic folder; and wherein the set of documents comprises metadata and content in a hierarchical form."

In addition, independent claims 16, 26, and 31 are allowable for containing a similar subject matter to that of claim 1. Therefore, claims 16, 26, and 31 and the claims dependent thereon are also allowable.

#### **CLAIMS REJECTION UNDER 35 U.S.C. 103**

Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted Prior Art AAPA (specification, [0003]-[0018]). Claims 14-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Long, *supra*. Claims 17-18, 20, 22, and 24 were rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA as applied to claim 16, and further

in view of Reddy et al. (US 2003/0084424), "Reddy". Claims 17-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Peltonen as applied to claim 16, in view of Reddy. Claims 19, 21, 23, and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA as applied to claim 16, in view of Shin et al. (US 2003/0212662), "Shin".

Applicants respectfully traverse these rejections and submit that none of the cited references discloses the elements and features of the claims on file as a whole, whether considered individually or in combination with each other.

Applicants incorporate by reference the presentation made earlier in connection with the allowability of the claims over AAPA. Applicants submit that similarly to AAPA, the cited references do not describe the following elements of representative claim 1:

"dynamically tailoring foldering criteria of the time of use, to enable a user to selectively access a predetermined dynamic folder; and wherein the set of documents comprises metadata and content in a hierarchical form."

As a result, the cited references, whether considered individually or in combination with each other do not describe the present invention as a whole. Reference is made to the following legal authority in support of the finding of non-obviousness:

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. The prior art perceived a need for mechanisms to dampen resonance, whereas the inventor eliminated the

need for dampening via the one-piece gapless support structure.  
"Because that insight was contrary to the understandings and expectations of the art, the structure effectuating it would not have been obvious to those skilled in the art." 713 F.2d at 785, 218 USPQ at 700."

In addition, the rejected claims are allowable for respectively depending on the allowable independent claims 16, 26, and 31.

### **CONCLUSION**

All the claims presently on file in the present application are in condition for immediate allowance, and such action is respectfully requested. If it is felt for any reason that direct communication would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned at the below-listed telephone number.

Respectfully submitted,

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/Samuel A. Kassatly

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